



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 308 OF 2015

HARISH KUMAR

... APPELLANT(S)

VERSUS

**AMAR NATH AND ANOTHER
(BOTH DEAD AND REPRESENTED THROUGH LR.) ... RESPONDENT(S)**

J U D G M E N T

S.V.N. BHATTI, J.

1. This Civil Appeal is at the instance of the Defendant in OS. 91-T/04 of 2000 on the file of the Junior Civil Judge's Court, Patiala. The appellant challenges the decree and the judgment dated 03.09.2012 in RSA No. 1637 of 2009, High Court of Punjab and Haryana. Through the impugned judgement, the concurrent findings of the Trial Court and the Appellate Court have been reversed.

2. The Respondent nos. 1 and 2 filed Suit No. 91-T/04 of 18.11.2000 for specific performance of the agreement of sale dated 12.02.1999 ('Suit Agreement'), said to have been executed by the appellant. The respondents have since deceased, and are represented through their legal representatives. The Suit Agreement is for a consideration of Rs. 70,000/-, and it is recited that the appellant has received Rs. 55,000/- from the Respondents as part consideration and put them in possession of the house bearing No. B-35/229 (Old Number 522) at Jattanwala Chauntara, Sirhindi Bazar, Patiala ('Suit Premises'). The deadline for obtaining the registered sale deed has been set out as 20.10.2000. The respondent, to explain the continuous possession of

the appellant in the Suit Premises, refers to a contemporaneous rent arrangement under which the appellant is continuing as a tenant of the Suit Premises at a monthly rent of Rs. 700/-. The respondent, on 20.10.2000, alleges to have been present at the sub-registrar's office for obtaining a registered sale deed from the appellant. The appellant did not turn up, and it is stated that the registration of the suit property pursuant to the Suit Agreement could not be completed. On 21.10.2000, the respondent issued a legal notice, calling upon the appellant to receive the balance sale consideration and execute a registered sale deed. On 18.11.2000, the instant suit was filed for specific performance and possession of the Suit Agreement and the Suit Premises.

3. The appellant alleges that the respondents committed fraud and misrepresentation. The case of the appellant is that the appellant borrowed a sum of Rs. 50,000/- from the first respondent, and the first respondent obtained signatures on blank stamp papers. The amount was borrowed at 2.25% interest per month. The signatures have been misused, and there was no agreement between the parties to sell or purchase the Suit Premises. The appellant claims to have repaid the loan on 25.07.2000. Having regard to the known relationship between the parties, the documents could not have been taken back by the appellant on the same date. Admittedly, the appellant, for avocation, does typing in the District Court premises, and the first respondent is a practising advocate in Patiala.

4. Further, the case of the appellant is that the respondent misused the blank signed stamp papers, though the appellant cleared the loan amount together with interest. There was no agreement to sell or purchase between

the parties. The demand for specific performance is surreal, and the Suit Agreement has been fabricated to file a suit for specific performance.

5. Respondent examined himself as PW1 and marked exhibits P1 to P9. It is contextual to observe that no other person is examined in discharging the onus fastened on the respondent by the pleadings of the case, and the issues for trial framed by the Trial Court.

6. The appellant examined himself as DW1 and also DW2 to DW5, and marked exhibits D1 to D10. The thrust of the appellant's evidence as part of discharging the burden fastened on him is to bring home the alleged fraud and misrepresentation; the signed stamp papers have been misused; and, without there being an agreement, which is sine qua non, for the enforcement of rights under the alleged agreement, the suit has been filed.

7. The following issues have been tried by the Trial Court:

- (i) Whether the defendant executed agreement of sale dated 12.02.1999?*
- (ii) Whether the plaintiffs have always been ready and willing to perform their part of agreement?*
- (iii) Whether the suit is not maintainable?*
- (iv) Whether the plaintiff has no cause of action to file the present suit?*
- (v) Whether the agreement is a result of fraud and misrepresentation?*

8. The Trial Court dismissed the suit, and the reasoning is summarised as follows:

8.1 Plaintiff-Respondents were professional moneylenders. The instances of money lending were cited by defendant witnesses. The defendant's witnesses also stated that the practice of obtaining signatures on blank papers was used. There was also a receipt relied on by the Trial Court in favour of Neelam Bhandari by the Respondents, which acknowledged the receipt of blank signed papers.

8.2 The consideration was disproportionately low. The house had a supposed market value of Rs. 4,04,000/- versus the Rs. 70,000/- consideration in the agreement dated 12.02.1999.

8.3 The Trial Court also noted that the plaintiff failed to prove that the defendant executed the agreement of sale.

9. The respondents filed CA No. 92T of 16.4.05/20.9.07/28.9.7 before the Additional District Judge, Patiala. By the judgment and decree dated 21.10.2008, the appeal of the respondents stood dismissed. To appreciate the concurrent view on findings of fact taken by the appellate court, the following gist is stated:

9.1 The First Appellate Court observed that the agreement to sell (Ex.P1) cannot be regarded as a genuine document and does not constitute proof of an agreement to sell. While the defendant has admitted his signatures on the document, he has categorically stated that these signatures were obtained by the plaintiffs on blank papers at the time the loan was advanced. The attesting witnesses to the agreement, Devinder Dhaman and Harnek Singh, have submitted affidavits (Ex.D5 and Ex.D6), stating that their signatures were obtained through fraudulent means by the plaintiffs and that the agreement was not executed in their presence.

9.2 The Court further considered that the receipt marked Ex.01 reveals that the plaintiffs, who are professionals engaged in money lending, habitually obtained signatures on blank papers from their borrowers.

9.3 It is also noted that the defendant had no alternative accommodation, rendering the sale of his sole house unlikely. Further, it was observed that the delay in executing the sale deed raises serious doubts as to the

authenticity and genuineness of the agreement. Consequently, the First Appellate Court found the defendant's claim to be credible as the plaintiffs have failed to establish that the agreement was duly executed by the defendant.

10. The respondent filed a second appeal, RSA 1637 of 2009, and through the impugned judgment, the view taken by the Trial and the Appellate Court has been upset. For completing the narrative, the findings of the High Court are summed up as follows:

10.1 The High Court found that the defendant had admitted his signatures at five places on the two-sheet agreement. Crucially, the defendant also admitted writing in his handwriting on the agreement regarding the receipt of Rs. 55,000/- as earnest money.

10.2 Due to the defendant's admission of his handwritten endorsement and initials on the agreement, the High Court concluded that his plea of having signed blank stamp papers and plain papers cannot be accepted.

10.3 The Court noted that the defendant, having worked as a typist in Patiala Courts for 15 years prior to the agreement, was well aware of the legal consequences of signing blank stamp papers and plain papers.

10.4 The High Court found that the Appellate Court misread the evidence by treating certain writings (Ex.D5 and Ex.D6) of attesting witnesses (Devinder Dhaman and Harnek Singh) as affidavits, even though these witnesses were never examined in the witness box.

10.5 The High Court discredited document Ex.D1 (a receipt from plaintiff No.1 to PW-4, used by the defendant to assert money-lending practices).

10.6 The High Court relied on the rent note (Ex.P3) and rent receipt (Ex.P4), which the defendant admitted executing, indicating he took the disputed house on rent from the plaintiffs after the agreement to sell and paid rent for a period.

10.7 The High Court noted that the defendant, during his cross-examination, stated that the criminal case lodged against plaintiff No. 1 and his son was dismissed by the Bar Council, and after investigation, the case was recommended for cancellation.

11. Mr. Abhimanyu Tewari, learned counsel for the appellant, contends that the substantial question of law, even by applying the standard applicable to an RSA in the High Court of Punjab and Haryana, is neither substantial nor a basic question of law. The misreading and misappreciation of evidence are not applied in an abstract way, and within the fold of such criteria, the re-appreciation of evidence leading to an opinion of the High Court is impermissible. In the case on hand, the evidence has been read in proper perspective, and findings of fact have been arrived at by the Trial and the First Appellate Courts. This view cannot be termed as misreading or misappreciation of evidence by the High Court. To assail the findings, he argues with force that assuming the appellant has set up a blank paper theory, then there is no prohibition in law to establish that the blank papers have been misused and that there was no agreement of sale, as projected by the plaintiff. The Trial Court has rightly placed the burden on the plaintiff, and except for the self-serving evidence of the first respondent, there is no other evidence on the existence of an agreement, execution of a contemporaneous rent deed, payment of rent, and demand for specific performance before the alleged agreed due date. Per contra, the witnesses to

the Suit Agreement, Devinder Thamman and Harnek Singh, are not tendered in evidence. The reason is that the alleged witnesses have given affidavits in D5 and D6 in favour of the appellant. The respondent should have summoned them as court witnesses to discharge the onus in proving the existence of the Suit Agreement. The specific performance is a discretionary relief. The impugned judgment has not exercised the discretion or considered the alternative relief of directing the refund of the admitted amount and giving quietus to the dispute between the parties. A sum of Rs. 2,00,000/- can be paid towards the repayment of the admitted debt of Rs. 50,000/-. The specific performance causes injustice to the appellant, and the impugned judgment warrants interference under Article 136 of the Constitution of India.

12. Mr. Krishnam Mishra, learned counsel for the respondents, places reliance on the findings recorded by the High Court and contends that since the signatures on the Suit Agreement and rent deed are not disputed by the appellant, the burden to prove the purpose for which the signatures are relied upon is on the appellant. The sketchy evidence adduced by the appellant cannot be said to discharge the burden fastened on a party who admits the signatures on a document and pleads blank paper theory. The minor discrepancies, if any, in the evidence of respondents ought not to be a ground for disturbing the well-considered judgment of the High Court. The threshold level of consideration of a second appeal, having regard to the state amendment, is different, and the impugned judgment conforms to the jurisdiction conferred on the High Court. In reply to the alternative argument of the appellant, it is contended that the appellant has also failed to prove that the amount borrowed from the respondent is duly discharged. It is argued that Rs. 4,00,000/- is reasonable either in view of specific performance

or towards discharging the advance of Rs. 50,000/- admittedly received by the appellant.

13. We have taken note of the rival contentions and perused the record.

14. At the outset, it can be noticed that in the peculiar pleadings of the case, the strict principle of burden of proof may not be the principle on which we propose to appreciate the evidence vis-à-vis the pleadings. In *Anil Rishi v. Gurbakshi Singh*,¹ this Court held that there is a distinction between burden of proof and onus of proof, and that onus of proof has greater force when the issue is which party is to begin forwarding evidence in support of a proposition. In matters such as the present, it is the onus of proof that is applied in determining whether the proof as needed to enforce an agreement is made out by the respondents or not.

15. The respondents did not examine the witnesses to the alleged Suit Agreement or the rent deed. The evidence of the respondent, as PW1, remains self-serving evidence and cannot be wholly relied upon as evidencing the execution of Exhibit P1– the Suit Agreement. As observed by the High Court, we may not look at the affidavits given by the said witnesses to Exhibit P1. The crucial aspect that was missed in coming to a conclusion of misreading or misappreciation of evidence in the impugned judgement is that no steps have been taken by respondents to at least cross-examine the affidavit given in Exhibits D5 and D6. The reasons are apparent. It is further noted that the respondent claims to have taken possession under Exhibit P1 and re-transferred possession to the appellant under a rent deed. In a circumstance such as the present, it is all the more a good requirement in law that the

¹ (2006) 5 SCC 558.

movement of possession from appellant to respondent has gone in the first instance, and secondly, re-transferred to the appellant by the respondent because the appellant was and is in possession of the Suit Premises. There is no evidence adduced by the first respondent. The consensus ad idem resulting in bringing into existence Exhibit P1 is a material circumstance, and though the issue calls upon the respondent to place evidence on this behalf, there is no evidence to support the case of the respondents. The respondent failed to place evidence either in support of the receipt of rent of Rs. 700 per month from the appellant or to demand execution of the registered sale deed before 20.10.2000. The failure to explain this crucial aspect certainly should have impressed upon the High Court in appreciating the existence of an agreement of sale between the parties. On the one hand, the respondents accepted the onus to discharge the existence of a valid agreement of sale, while on the other, the evidence the respondents provided is self-serving. In *Man Kaur (Dead) by LRs. v. Hartar Singh Sangha*,² this Court held that to succeed in a suit for specific performance, the plaintiff has to prove (a) the existence of a valid agreement of sale, (b) that the defendant committed breach of contract; and (c) that the plaintiff was always ready and willing to perform his part of the obligations in terms of the contract. In light of this, even if the respondents were ready and willing to perform their part of the obligations in the supposed Suit Agreement, they failed to prove the existence of a valid Suit Agreement.

16. With the assistance of the Counsel appearing for the parties, we have looked at oral evidence as well, and without much deliberation, we hasten to add that the High Court fell into error in coming to the findings noted above.

² (2010) 10 SCC 512.

Therefore, the findings are unsustainable, warrant interference with the impugned judgment and hence are set aside. The above consideration takes us to the very case of the appellant that the appellant borrowed a sum of Rs. 50,000/- and claims to have returned it. We note that the onus to discharge the claim of returning the debt borrowed from the respondents rests on the appellant. The indebtedness of the appellant to the respondents can be accepted in the admission of the appellant. The appellant, to stay clear from the enforcement of the said debt, must prove discharge of the debt, in the manner known and accepted by the law. There is no evidence on the discharge of debt by the appellant. Thus, irrespective of the terminology and the relief we mould, the appellant cannot have it both ways. Therefore, we hold that the respondents are entitled to receive a sum of Rs. 3,00,000/- from the appellant, within four weeks from today. The appeal stands allowed as indicated above. All pending applications are disposed of.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

**New Delhi;
August 05, 2025.**